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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Changes to the Board of) CC Docket No. 97-21
Directors of the National Exchange)
Carrier Association, Inc.)

COMMENTS OF THE LEC ASSOCIATIONS

The Rural Telephone Coalition (RTC) and the United States Telephone Association (USTA) (collectively, The Associations) hereby file their comments in response to the Notice of Proposed Rulemaking in this Docket released January 10, 1997.¹ The Associations, as national trade associations collectively represent virtually all of the incumbent local exchange carriers (ILECs) in the United States. All of these ILECs are members of the National Exchange Carriers Association (NECA) and thereby have a vital interest in proposals which might lead to its restructuring.

I. INTRODUCTION

A. Organization and Function of NECA

As stated in the NPRM, NECA was created pursuant to FCC rules in 1983 to perform the tariff and pooling functions for the LEC industry which had previously been performed by AT&T pursuant to settlements and division of revenue contracts. The organic rules for NECA were

¹ These comments address the NPRM specifically, however, many of the same issues will arise under the Notice of Inquiry and a subsequent Further NPRM. The associations expect to provide further comments to the NOI.

adopted by the Commission at the suggestion of the Associations that the new tariffing and pooling agent should be a non-profit entity under democratic control of the participants in its tariffs and pools. The formation of NECA allowed continuation of the risk sharing and rate averaging benefits of pooling, while providing regulatory efficiency of a single tariff filing with the Commission instead of over a thousand individual tariffs. The mixture of large, midsize and small LECs represented on the NECA board of directors has changed over the years as pooling became voluntary and "outside" directors were added.

At the time the Commission adopted the rules calling for the creation of NECA, it recognized that a board could not be nominated and elected, an entity created and staff hired in time to file the initial tariffs required by the schedule of conversion to the access charge regime. It therefore directed AT&T to perform the NECA functions on an interim basis.² Despite the obvious conflict of having the initial tariff prepared by its largest customer, it was apparent to the industry and the Commission at the time that the time schedule required an in-place working and capable organization to begin the process immediately, and that AT&T was the only entity capable of performing that task. AT&T, recognizing the conflict, established an advisory committee of LEC industry representatives to function in place of the to-be elected NECA Board.

NECA was then incorporated as a not for profit corporation under the Delaware Corporation Code. Although created and operated as an entity whose structure and powers are subject to FCC rules, NECA is not a common carrier, but is the agent of common carriers. As a corporate entity, NECA is subject to the same corporate law provisions applicable to any

² *In the Matter of MTS and WATS Market Structure (Phase I)*, 93 F.C.C. 2d 241, 336 (1983).

corporation similarly organized, including the fiduciary duty of its Board of Directors to its members, and the fiduciary duty of NECA as the agent of its principals. In its 14 years of existence, there has not been a definitive ruling by either courts or the Commission as to how any conflicts between NECA's regulatory and corporate law obligations would be resolved.³

B. Proposed Interim Changes

The Telecommunications Act of 1996 requires the Commission to institute a Section 410(c) Joint Board Proceeding to recommend rules to implement Sections 214(e) and 254 of the new act in regard to support of Universal Service.⁴ In addition to the current forms of universal service support, the 1996 Act specifies programs to support service to schools, libraries and rural health care facilities.⁵ On November 8, 1996, the Joint Board adopted recommendations, which, *inter alia*, propose a program to provide support to schools and libraries through discounted rates as contemplated by the Act. The Joint Board recommended that this program begin with the 1997-98 school year and that NECA be appointed as temporary administrator, with the caveat that NECA be permitted "to add significant, meaningful representation for non-incumbent LEC interests" to its Board.⁶

³ See, e.g., Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association, CC Docket No. 87-2, *Report and Order*, 3 FCC Rcd 6885 (1988).

⁴ 47 U.S.C. 254(a)(1).

⁵ 47 U.S.C. 254(b)(6), (h).

⁶ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, FCC 96J-3, (rel. Nov. 8, 1996).

On January 7, 1997 the Associations wrote to Chairman Hundt to urge that the Commission act promptly on the Joint Board recommendation because the complexity and volume of the necessary tasks were such that the goal of implementation by the next school year could not otherwise be met.⁷ The letter emphasized that “there is a long way to go and a short time to get there.” The Associations also stated that: above all, no change should be implemented that could adversely affect NECA’s important role as tariff and pool administrator.

On October 18, 1996, NECA proposed that the Commission permit interim changes to its board structure to address the concerns which had been expressed in CC Docket 96-45 regarding its suitability as administrator of the Universal Service Fund. On January 10, 1997, NECA again wrote to the Chairman with a significantly revised proposal, superseding the October letter. On the same day, however, the Commission released the instant NPRM, in essence asking for comment on the October letter. The Associations’ comments will focus on the underlying issues and the January 10 NECA proposal.

II. THE COMMISSION SHOULD ADOPT NECA’S JANUARY 10, 1997 PROPOSAL FOR INTERIM ADMINISTRATION OF THE SCHOOL, LIBRARY AND RURAL HEALTH CARE PROGRAM

A. NECA’S Proposal is Preferable to Creation of a New Subset for Legal, Policy and Operational Reasons.

The NPRM tentatively concludes that the composition of the NECA Board must be altered to make it more representative of all segments of the telecommunications industry, and seeks comment on how the rules should be revised in a manner that allows it to operate in an

⁷ A copy of the letter is included as Attachment A.

efficient, fair, and competitively-neutral manner.⁸ The NPRM further asks whether there are any legal limitations which preclude NECA from creating an advisory committee or a new subset of directors with responsibilities limited to matters relating to the administration of the universal service support mechanism.

The suggestion to create a new subset of directors, while adding representation from other elements of the industry, would create substantial legal and operational difficulties. Corporate law does not recognize the concept of a limited duty director, so that all would bear full responsibility to all the members of the corporation. Directors selected by entities outside the ILEC industry should not, and would not want to be responsible for proper management of the tariff and pooling functions. NECA's January 10 proposal to establish a subsidiary with a broadly representative board, substantially avoids these problems, while providing meaningful representation for other interested industry segments.

The public policy reasons for adopting the NECA proposal are both the necessity for a prompt start on the creation of the new programs and the desirability of retaining the substantial expertise which NECA has developed.⁹ If some other entity were to be assigned the job at this time, it is inevitable that the goal of implementation by the next school year could not be met.

⁸ NPRM, Para. 11.

⁹ The industry support for reappointment of NECA of the TRS program is an indication of its ability to function both efficiently and fairly.

On the other hand, the ILECs who, are NECA members¹⁰ are entitled to have their agent controlled by persons elected by them and the NECA January 10 plan preserves that status as well.

B. The Commission, On Advice Of The Interested Parties, Should Establish A Procedure For Election Or Appointment Of Members Of The Subsidiary Board.

The Associations do not claim to have sufficient knowledge of the school, library and health care industry to suggest how representatives should be chosen. We do agree that those communities, as well as non-LEC telecommunications carriers should participate, along with an appropriate number of NECA Board members. Because this process will necessarily take some finite period of time, the Associations again urge the Commission to appoint NECA at once so that it may begin preparations now in order to meet the time goal.

¹⁰ See, 47 CFR 69.601(b).

III. CONCLUSION

For the reasons set forth above, the Commission should act promptly to appoint NECA as interim administrator for the Schools, Libraries and Rural Health care program and authorize it to create the subsidiary described in its January 10, 1997 proposal. The Commission should not require changes to the NECA Board itself and can take a reasonable time to determine the composition of the subsidiary board, but the appointment must not be delayed if the program is to begin with the next school year.

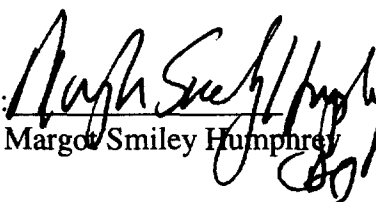
Respectfully submitted,

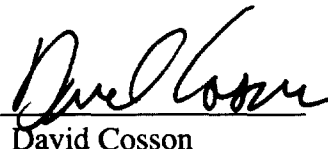
THE RURAL TELEPHONE COALITION


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January 27, 1997



Rural Telephone Coalition

January 7, 1997

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RE: CC Docket No. 96-45
Federal-State Joint Board on
Universal Service:
Cost Proxy Models

Dear Mr. Morabito:

The Rural Telephone Coalition (RTC) is comprised of the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). These associations together represent more than 850 local exchange carriers (LECs) that provide service to rural communities throughout the United States.

The development workshops on the various cost proxy models are very important to these small companies, since the Joint Board recommends that all carriers draw high cost support solely based on the calculations of a not-yet-adopted cost proxy model by the year 2004. The RTC emphasized in its comments that the Commission must recognize the unique circumstances surrounding small and rural companies and carefully consider rural issues before implementation of a proxy-based mechanism for rural LECs begins. In that regard, the RTC looks forward to the workshops for refinement and modification of the proposed models.

The RTC agrees with the Commission and the Joint Board that the issues raised in the December 12, 1996, *Public Notice* must be addressed before any model is adopted for use by any carriers. The RTC also recognizes that a separate proceeding will be held to tailor a proxy to rural local exchange carrier needs. However, it is essential that the general proxy development phase

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generate enough information for full assessment of impacts. Accordingly, the RTC would like proponents of the various models to address some additional issues. The Joint Board states in its proxy evaluation criteria that the model must include the capability to modify the critical assumptions and engineering principles. However, no specific details regarding scheduled updates are requested. Do the model's proponents have a plan for continued update and/or revision to the model inputs or to the model itself? Further, will there be some provision for updating census data in years between data collection? Will there be an opportunity to reflect on individual local exchange carrier data within the proxy model?

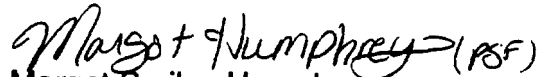
In addition, the RTC is interested in how the model will address differing levels of market share. As the industry moves successfully toward competition and develops into markets of multiple network providers, levels of market share will vary. Should the model assume different levels of market share? In what ways does the model account for potential multiple providers?

The RTC appreciates your consideration in these matters.

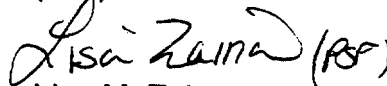
Sincerely,



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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the Rural Telephone Coalition and United States Telephone Association in CC Docket No. 97-21 was served on this 27th day of January 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


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